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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,998

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Rebecca M. Minard

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01/28/2010

EDWARDS ANGELL PALMER & DODGE LLP

P.O. BOX 55874

BOSTON, MA 02205

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/762,998	<b>Applicant(s)</b> MINARD ET AL.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 128, 130, 132, 135-147, 149, 154-165 and 168-183 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 128, 130, 132, 135-147, 149, 154-165 and 168-183 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

Claims 128, 147, 165, 183 stand, & claims 143,161,179 are ,as do independent claims, continue to be rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Two or more feed materials can be in at least 2 package sections of the unitary package. Thus, some sections may have only one feed material. The claim language should explain/present the desired limitations, in order to eliminate misinterpretation & multiple interpretations.

As it stands, each package must have multiple sections, each containing the same components in more or less the same amounts &/or ratios. At claims 130, 149; one section can contain all 3 components and meet the claim.

Again, the unitary package is claimed (128) to contain at least two feed materials weighing within about 5% or less, of an unidentified specified amount. Each package need not contain feed. HOWEVER, as claimed, the 5% can mean each feed material in at least 2, but not necessarily more than 2, sections must be 5% of an UNIDENTIFIED, specified amount. The 5% can be of the total feed material in the individual section, the total feed material in the unitary package, the % of the total of the feed material in the

individual package of a different feed material, or 5% of a targeted amount for each feed material, in each unitary package, or in each section in which it is placed, for example.

Examiner interprets within about 5% to be between 4 and 6%, but “about less than 5%” can also be 6%. Claims 128, 147, 165-, 183 are all unclear as to the 5%; claim 165 is unclear-each section can contain two ingredients, the total weight within 5%. The language is unclear as to how much the package weighs, how much each section weighs, and how many ingredients are in each section.

Absent any basis claimed for the “unspecified amount,” this is seen as a non-patentable consideration, since one could argue the specified amount changes at each preparation and can be 1 gram to 100 pounds at each and every instant of preparing the unitary package. Further, the percent is to the total of the feed materials of the unitary package.

Claims 143,16,179 recite a selection of one , rather than 2, feed materials. Thus, they do not further limit the claims they depend from, while they do obfuscate the claim interpretation.

### ***Claim Rejections - 35 USC § 103***

Claims 128, 130, 132, 135-145, 147, 149, 154-163, 165, 168-175, 178, 179 stand rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1474931 with teaching of MERCK '67.

See page 2-lines 14-17- large numbers of animals of differing eating habits may be fed, AS WELL AS INDIVIDUAL ANIMALS.

Claims 128, 130, 132, 135-145, 147, 149, 154-163, 165, 168-175, 178, 179 stand rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1474931 with teaching of MERCK '67 in view of MATSOURA- EP 0609056.

Claim 128, 145, 146, 147, 163, 164, 165, 176, 177 stand rejected under 35 U.S.C. 103(a) as being unpatentable over over G B - 1474931 and Magnant et al-

5787839 and Pedigree as a teaching reference, & further in view of Merck '67. Given the recent KSR (2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385) determinations to allow for the practitioner in the art to use common sense, and test with expectation of success; it would have been well within the purview of the artisan to prepare a specific diet of a combination of required and desired feed ingredients to feed a specific, selected dog from a daily container of multi-compartmentalized packages..

Claims 128, 130, 132, 135-147, 149, 154-165 and 168-183 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB in view OF YAMAMOTO et al JP 10014501 and MATSOURA ET AL jp 0609056 in view of DERRIEU et al-6599888.

GB (above) does provide a unitary package, compartmentalized feed for animals. The feed materials are distinct and include vitamins, fat, bran, liver, and protein as

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heart, in separate sealed packages, of one or more specified amounts of each feed in each package (page 1, lines 70-81). Two or more distinct edible feed materials-liver, heart, bat, bran, vitamin (page 7, lines 70-81; Figures 1, 2).The liver, and heart constitute protein supplements. Page 2, lines 12-18 show the intent is to meet the feed requirements of individual animals; the instant specified dogs.

GB does not identify a particular dog. It would have been obvious to the feeder, that inclusion of a veterinary preparation, and selection of a desired size for each feed for specific animals, since GB states that individual animals feed requirements can be met . MATSOURA show this idea in preparations of prescription diets for cats or dogs [0010] of a specific individual. Feed amounts are specified for the particular animal [0020] and can be given separately or with other feed.

YAMAMOTO feeds cats from a unitary package of 2 or more separate feed materials; feed, or protein-bonita (Figure 1, page 15). The bonita is within 5% of the dry feed [0010]. Other feeds are at [0012]. Pouches are polymeric, flexible, and metallic foil, rigid [0013]. Seven units are disclosed [0014]. Feeds were set for individual cats (See Tables).

DERRIEU is cited to show chondroitin sulfate and glucosamine are known to be administered (column 2, lines 13-25) orally to treat arthritic conditions (column 4, lines 25-36) in dogs (Example). Tablets are prepared, of specific weight (Table 1). It would be obvious to include the dosage DERRIEU of chondroitin sulfate when preparing feed for an arthritic dog. Besides this feed, vitamin C, E and minerals can be added (column 3, lines 42-54).

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It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a container for feed, to use any of art recognized means, as of GB , YAMAMOTO. Motivation to use a specific container is shown by YAMAMOTO.,and exact ratios and amounts of feeds are within the purview of one in the art to attain, in order to optimize desired effects, such as control of specific nutritional needs, amount of feed depending on size, age, sex, & desires of the target.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pet of interest, reduction of toxicity, cost minimization, enhanced, and effects, with consideration of ingredient compatibility.

There is no non obvious and/or unexpected results obtained since the prior art is well aware of the use of feed for control of health and the use of nutrients & amounts thereof for the functionality for which they are known to be used is not a basis for patentability.

### ***Response to Arguments***

Applicant's arguments filed 12/08/09 have been fully considered but they are not persuasive. Applicant's arguments are that the feed materials are distinctly identified as: feed,minerals, vitamins, electrolytes, proteins & herbs. Examiner finds that while clearly these subclasses of feed materials overlap, it is still within the scope of the specification for one in the dog feed arts to recognize distinctions -protein is thus not equivalent to

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liver or meat per se, nor would calcium be considered an electrolyte, or Mn a mineral, in the context used.

As to the art rejections, applicant argues no one feeds to a specified dog. The declaration of commercial success warrants consideration, but examiner finds it is left to the prior art feeder to prepare the packages with required amounts for either generic dogs, or for specific animals. It is clear from the prior art that one can adjust the feed components for a specific dog, even though that exact language may be lacking.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615

1/12/2010